



## 22 CFR Part 135

[Public Notice: 11807]

RIN 1400-AF52

### Implementation of HAVANA Act of 2021

**AGENCY:** Department of State.

**ACTION:** Supplemental interim final rule.

**SUMMARY:** This document supplements the interim final rule (IFR) published by the Department of State (the Department) on June 30, 2022, implementing the HAVANA Act of 2021. The Act provides authority for the Secretary of State and other agency heads to provide payments to certain individuals who have incurred qualifying injuries to the brain. The Department is modifying one provision of the IFR relating to the Board certification of the physician who is required to assess and diagnose an individual's qualifying injury to the brain and who completes the DS-4316, "Eligibility Questionnaire for HAVANA Act Payments". The updated regulation provides that physicians may be certified by either the American Board of Psychiatry and Neurology (ABPN) or the American Board of Physical Medicine and Rehabilitation (ABPMR).

**DATES:** Effective August 15, 2022.

**FOR FURTHER INFORMATION CONTACT:** Susan Ware Harris, Senior Advisor, Health Incidents Response Task Force, 202-679-0127, [HARuleInfo@state.gov](mailto:HARuleInfo@state.gov).

**SUPPLEMENTARY INFORMATION:** The Department is amending the interim final rule that it published June 30, 2022 at 87 FR 38981. The text of the interim rule remains unchanged, except for certain provisions in § 135.3. The Department is providing that either physicians currently certified by the American Board of Psychiatry and Neurology (APBN) or the American Board of Physical Medicine and Rehabilitation (ABPMR) may assess an individual's qualifying

injury to the brain and complete the DS-4316, “Eligibility Questionnaire for HAVANA Act Payments”. The DS-4316 will also be modified to reflect this regulatory change.

The Department is publishing this Supplemental IFR both in response to public comments advocating for this addition and additional corroborative information from medical providers. The Department has consulted with officials at several prominent medical centers. Based on those inquiries, it appears that the majority of patients who have reported anomalous health incidents were seen by either a neurologist certified by the American Board of Psychiatry and Neurology (ABPN) or by a physician certified by the American Board of Physical Medicine and Rehabilitation (ABPMR). The Department believes that it would be in the best interest of the public and affected community if, on the effective date of the IFR, part 135 provided that patients could be assessed by physicians currently certified by either ABPN or ABPMR.

The comment period for the IFR closed on August 1, 2022, and the Department will publish a final rule addressing the other relevant comments in the near future.

### **Regulatory Analyses**

The regulatory analyses included in the IFR are adopted herein, supplemented by the following comments. With respect to the Administrative Procedure Act, this Supplemental IFR is a technical amendment to the IFR, which was a rule relating to public benefits and therefore exempt from the requirements of 5 U.S.C. 553. *See* 5 U.S.C. 553(a)(2). Since the IFR and this Supplemental IFR are exempt from the entirety of § 553 pursuant to § 553(a)(2), the provisions of §553(d) do not apply. This Supplemental IFR will be in effect on August 15, 2022, with the IFR.

With respect to Executive Order 12866, the Office of Information and Regulatory Affairs has designed this Supplemental IFR “non-significant”.

### **List of Subjects in 22 CFR Part 135**

Federal retirees; Government employees; Health care.

Accordingly, for the reasons stated in the preamble, the Department of State amends 22 CFR part 135 as follows:

## **PART 135 – IMPLEMENTATION OF THE HAVANA ACT OF 2021**

1. The authority citation for part 135 continues to read as follows:

Authority: 22 U.S.C. 2651a; 22 U.S.C. 2680b.

2. Amend § 135.3 by revising paragraphs (a) through (c) and paragraph (e)(2) to read as follows:

### **§ 135.3 Eligibility for payments by the Department of State.**

(a) The Department of State may provide a payment to covered individuals, as defined herein, if the qualifying injury to the brain was assessed and diagnosed in person by a currently board-certified neurologist from the American Board of Psychiatry and Neurology (ABPN) or a physician currently certified by the American Board of Physical Medicine and Rehabilitation (ABPMR), occurred on or after January 1, 2016, and while the individual was a covered employee of the Department.

(b) The Department of State may provide a payment to covered employees, as defined herein, if the qualifying injury to the brain was assessed and diagnosed in person by a currently board-certified neurologist from the ABPN or a physician currently certified by the ABPMR, occurred on or after January 1, 2016, and while the employee was a covered employee of the Department.

(c) The Department of State may provide a payment to a covered dependent, if the qualifying injury to the brain was assessed and diagnosed in person by a currently board-certified neurologist from the ABPN or a physician currently certified by the ABPMR, occurred on or after January 1, 2016, and the dependent's sponsor was a covered employee of the Department at the time of the dependent's injury.

\* \* \* \* \*

(e) \* \* \*

(2) Whether the Department of Labor (Workers' Compensation) has determined that the requestor has no reemployment potential, or the Social Security Administration has approved the requestor for Social Security Disability Insurance, or the requestor's ABPN-certified neurologist or ABPMR-certified physician has certified that the individual requires a full-time caregiver for activities of daily living, as defined by the Katz Index of Independence of Daily Living.

\* \* \* \* \*

**Kevin E. Bryant,**

*Deputy Director,*

*Office of Directives Management,*

*U.S. Department of State.*

**Billing Code: 4710-10**

[FR Doc. 2022-16968 Filed: 8/5/2022 8:45 am; Publication Date: 8/9/2022]